

TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2016-41

RECEIVED
JUL 12 2016

BY: V. Walton

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING THE PUBLIX SIGN VARIANCE, FOR THE LAND OWNED BY ATANTIC LAND INVESTMENTS, CONSISTING OF 21.73 ADRES MORE OR LESS, LOCATED AT THE NORTHWEST CORNER OF SOUTHERN BOULEVARD AND "B" ROAD, IN LOXAHATCHEE GROVES, FLORIDA, LEGALLY DESCRIBED IN EXHIBIT "A" TO THIS RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council, as a governing body of the Town of Loxahatchee groves, Florida ("Town"), pursuant to the authority vesting in Chapter 163 and Chapter 166, Florida Statutes, is authorized and empowered to consider applications relating to variances from land development regulations for development on property within the Town; and.

WHEREAS, the Town Council, pursuant to Section 105-010 (Authority) of the Town of Loxahatchee Groves Unified Land Development Code (ULDC) is granted the authority to permit a variance to the provisions of the ULDC related to: (1) height; (2) yards; (3) parking and loading; (4) landscaping and buffers; (5) separation of uses; (6) plot coverage; and/or (7) such other provisions of the Code which do not specifically prohibit such requests; and.

WHEREAS, the notice and hearing requirements, as provided for in Article 115 (Public Hearing Notices) of the Town of Loxahatchee Groves Unified Land Development Code have been satisfied; and

WHEREAS, the Town Planning and Zoning Board (P&Z Board), at its meeting on May 19, 2016, recommended approval of the Publix Supermarkets, Inc. Application VA2016-01; and

WHEREAS, the Publix Supermarkets, Inc. Application VA 2016-01 was presented to the Town Council as a quasi-judicial public hearing conducted on June 21, 2016; and

WHEREAS, the Town Council has considered the evidence and testimony presented by the Applicant and other interested parties and the recommendations of Town Staff and Town P&Z Board; and

WHEREAS, this approval is subject to Section 105-030 (time limits) of the Town of Loxahatchee Groves Unified Land Development Code (Town ULDC) and other provisions requiring that development commence in a timely manner.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Loxahatchee Groves as follows:

Section 1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

Section 2. The Town Council has considered the analysis and findings of the report entitled "Town Council Agenda Item Report Publix Sign Variance 2016-01:" dated June 21, 2016, and Town Planning and Zoning Board recommendation, and makes the following findings:

1. VA 2016-01 is a request to increase the maximum sign face of an anchor tenant wall sign of 60 sq. ft. to a maximum sign face of 119.08 sq. ft. for the Publix tenant of Loxahatchee Groves Commons shopping center.
2. VA 2016-01, as amended by the Town Council during the hearing, complies with the relevant and appropriate portions of applicable Town of Loxahatchee Groves land development regulations, including Section 105-010(B) and 105-010(C).
3. The Applicant has demonstrated, based upon responses to the requirements of Section 105-020 (considerations for variances) of the Town of Loxahatchee Groves land development regulations, that a variance to permit a sign of up to 74 sq. ft. is not contrary to the public interest.

Section 3. The Town of Loxahatchee Groves Unified Land Development Code requires that the action of the Town Council of Loxahatchee Groves be adopted by resolution. Therefore, the Town Council of the Town of Loxahatchee Groves approves the Publix Supermarkets, Inc. Variance Application VA 2016-01, as amended to permit a sign of up to 74 sq. ft., for the parcel of land legally described in Exhibit A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in Exhibit A, attached hereto and made a part hereof.

Section 4. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 6. This Resolution shall become effective upon adoption.

Council Member MCLENDON offered the foregoing resolution. Council Member JARRIEL seconded the motion, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
DAVIS BROWNING, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOM GOLTZENÉ, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <i>recused</i>
RON JARRIEL, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RYAN LIANG, COUNCIL MEMBER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TODD MCLENDEN, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RESOLVED AND ADOPTED by the Town Council of the TOWN OF LOXAHATCHEE GROVES, Florida this 27th day of JUNE 2016.

ATTEST:

Virginia M Walton
Virginia Walton, Town Clerk

APPROVED AS TO LEGAL FORM:

[Signature]
Town Attorney

TOWN OF LOXAHATCHEE GROVES,
FLORIDA

David Browning
Mayor David Browning

Tom Goltzene
Vice Mayor Tom Goltzene

Ronald D Jarriel
Council Member Ron Jarriel

Ryan Liang
Council Member Ryan Liang

Todd McLendon
Council Member Todd McLendon



EXHIBIT A

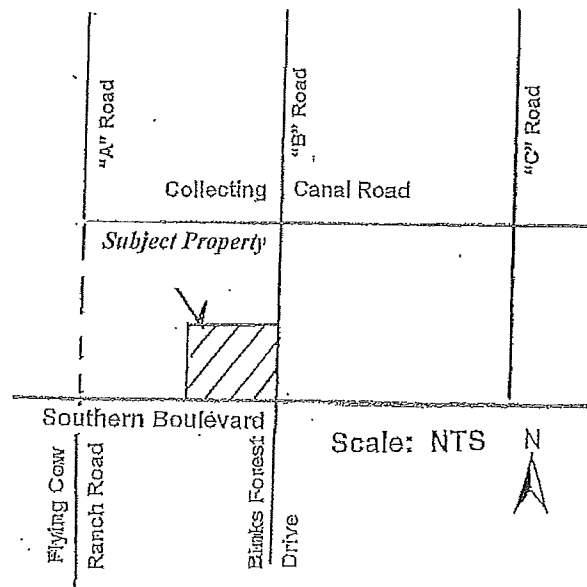
LEGAL DESCRIPTION AND LOCATION MAP

The following Legal Description is applicable to Resolution 2016-42:

Parcel Control Number: 41-41-43-31-09-000-0020

Tract A, of LOXAHATCHEE GROVES COMMONS, according to the plat thereof as recorded in Plat Book 121, Pages 95-98, Public Records of Palm Beach County, Florida

LOCATION MAP



ATTACHMENT 1

PUBLIX VARIANCE STAFF REVIEW AND FINDINGS

Per ULDC Section 150-020 of the ULDC, a variance will not be contrary to the public interest if the Applicant has demonstrated, by competent and substantial evidence, that each of five review criteria is met. The five criteria and the Applicant's responses are presented below:

A. Criterion 1: That special conditions and circumstances exist which are unique to the property, or the intended use of the property, that do not generally apply to other properties in the same zoning district.

1. Applicant's Response: Publix is the anchor tenant in a multi-tenant shopping center which sits several hundred feet back from Southern Boulevard. When you consider the overall size width of the proposed storefront at 237 feet, we feel that an 60 square foot sign would not be visible or proportionate to a building of this size.

2. Staff Review: The property is 21.73 acres in size with the following dimensions: Frontage on Southern Boulevard – 1,022 feet; and depth from Southern Boulevard – 771 feet. The size and dimensions of the property allow substantial flexibility to design projects in compliance with ULDC standards. Special circumstances have not been justified.

B. Criterion 2: That any alleged hardship is not self-created is not self-created by any person having an interest in the property and is not the result of mere disregard for, or ignorance of, the provisions of the Code, but is instead the result of one or more of the special condition(s) found above.

1. Applicant's Response: Our hardship and major concern is visibility. The hardship is not self-created, but due to the provisions of the building code required for setback of the building from Southern Boulevard.

2. Staff Review: The ULDC requires a minimum front yard setback of 50 feet in the CL zoning district, while the Publix grocery is setback approximately 380 feet from Southern Boulevard. The setback greatly exceeds the ULDC requirement and was the Developer's choice. The setback could have been substantially less; therefore enhancing the visibility of a code-required sign. As a result, it is concluded that the visibility hardship was self-created. A hardship has not been justified.

C. Criterion 3: That literal interpretation of the Code would deprive the applicant of reasonable use of the property, in that the applicant would be deprived of rights commonly enjoyed by properties in the same zoning district, and would thereby cause an unnecessary and undue hardship.

1. Applicant's Response: We feel that our request if approved will not convey any special privileges to this tenant under this interpretation of the code; 60 square feet of signage on an elevation of 237 feet in length will make the sign impossible to read at any reasonable distance; which we feel is an unnecessary and undue hardship.

2. Staff Review: The applicant is not deprived of the right to design a project in compliance with the ULDC in a manner commonly enjoyed by properties in the same zoning district. The Applicant has stated that the ULDC required sign dimensions will result in reduced visibility from Southern Boulevard. However, how that will result in a hardship and the magnitude of that hardship has not been explained. Therefore an unnecessary and undue hardship cannot be determined by Applicant's response.

D. Criterion 4: The Variance proposed is the minimum variance that will make possible the reasonable use of the property and it will not confer on the applicant any special privilege that is denied to any other properties in the same zoning district.

1. Applicant's Response: With visibility being our main concern, please consider that our request is far less than 10% of the overall square footage of the proposed elevations. We feel that our request is the minimum needed to advertise this property and the way intended by the Town's code.

2. Staff Review: The Applicant has not demonstrated that the request is the minimum necessary to insure reasonable use of the property.

E. Criterion 5: That the granting of the variance will be in harmony with the general intent and purpose of the Code and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

1. Applicant's Response: The general intent of the proposed code that each tenant adequately advertise their business with signage that is proportional, visible and most of all architecturally pleasing. We feel that our request will not be injurious or detrimental to the public welfare. Instead, the larger signs will provide the general public and visitors the ability to identify the store for safe and easy access.

2. Staff Review: The Applicant has not demonstrated how approval of the Variance will maintain compatibility insured by ULDC standards.

ATTACHMENT 2: UPDATED STATEMENT OF CONSISTENCY WITH VARIANCE CRITERIA

A. Criterion 1: That special conditions and circumstances exist which are unique to the property, or the intended use of the property, that do not generally apply to other properties in the same zoning district.

1. Applicant's Updated Response: The special condition and circumstance that exists is that Publix is the anchor tenant in a multi-tenant shopping center with over 200 linear feet of storefront. When you consider the overall size of the proposed storefront at 237 feet, the required 60 square feet of signage is not proportional to the overall size of the storefront. If this storefront was divided into standard 20 foot bays in a multi-unit center, the code would allow nearly 240 square feet of total signage. We are asking for 120 square feet of signage for Publix Food & Pharmacy. The Crestwood store just east of this location has sign with the Publix letters at 5 feet tall with sub copy of Food & Pharmacy and Deli Bakery. The total signage square footage is 176.62. Signs requested in this variance are far less than any in Palm Beach County.

B. Criterion 2: That any alleged hardship is not self-created is not self-created by any person having an interest in the property and is not the result of mere disregard for, or ignorance of, the provisions of the Code, but is instead the result of one or more of the special condition(s) found above.

1. Applicant's Updated Response: The code in its present form does not allow for adequate and proportional signage for larger tenants. The existing code does not take into consideration a retailer of this size. The code only addresses signs up to a maximum size of 60 square feet, far less than any tenant of this size would require for proper identification. Current code was designed for tenants with much smaller retail space.

C. Criterion 3: That literal interpretation of the Code would deprive the applicant of reasonable use of the property, in that the applicant would be deprived of rights commonly enjoyed by properties in the same zoning district, and would thereby cause an unnecessary and undue hardship.

1. Applicant's Updated Response: We feel that the success of this retail center very much rests upon the success of its anchor tenants. The literal interpretation of the code as it exists would deprive the applicant of signage that would aid their success because of their size, while tenants with smaller retail space would be allowed signage that would be uniform with their space and perhaps aid them in proper identification.

D. Criterion 4: The Variance proposed is the minimum variance that will make possible the reasonable use of the property and it will not confer on the applicant any special privilege that is denied to any other properties in the same zoning district.

1. Applicant's Updated Response: Our request is the minimum variance needed to answer the concern of size as it relates to the sign being in proportion to the overall size of the storefront. This Publix location has been developed to provide the general public with a drive-thru pharmacy. Not all stores within the Publix family have a pharmacy. Decreasing the main copy of the 'Publix' sign would require us to decrease the size of the sub copy, 'Food & Pharmacy', which will not allow for illumination of the sub copy due to the decreased size. Please note as stated earlier that the signs proposed are compatible with signs in the general area as to type and style, but are much smaller than any other Publix store of its size in the Palm Beach County area.

E. Criterion 5: That the granting of the variance will be in harmony with the general intent and purpose of the Code and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

1. Applicant's Updated Response: We feel that our request will not be injurious or detrimental to the public welfare. Instead, it will provide the general public and visitors the ability to identify the store for safe and easy access. Adequate signage is critical to the survival of anchor tenants which in turn

becomes critical for their success, as well as the success of the center as a whole. The general intent of the code is to provide each tenant with adequate signage to advertise their business that is proportional, visible and most of all architecturally pleasing. The existing code does not address these concerns for tenants with larger retail spaces.

Town of Loxahatchee Groves, Florida
Town Council Agenda Item Report
Publix Sign Variance VA 2016-01

PREPARED BY: | Jim Fleischmann

June 21, 2016

SUBJECT: Increase the size of the sign face of the Publix wall sign above the maximum allowed by the Town Code.

1. BACKGROUND/HISTORY

History: A Commercial Low Planned Unit Development (CL/PUD) zoning designation was assigned the Loxahatchee Groves Commons shopping center located at the northwest corner of Southern Boulevard and “B” Road by Town Council Ordinance 2013-09 (February 17, 2015). The Site Plan, including a 46,031 sq. ft. Publix grocery store, was approved by the Town council (Resolution 2015-05) at the same meeting. The shopping center is currently under construction.

Problem Statement: The Town Council should consider the Applicant’s variance request to increase the sign face of the wall sign to a size greater than the maximum the ULDC currently permits. The ULDC currently permits a maximum sign face on an anchor tenant wall sign of 60 sq. ft., while the Applicant proposes to increase the sign face to 119.08 sq. ft.

Problem Solution: A variance will not be contrary to the public interest if the Applicant has demonstrated, by competent and substantial evidence, that each of five review criteria in ULDC Section 150-020 is met. In order to recommend approval of the proposed variance, the Town Council should find that the application meets each of the five criteria.

2. CURRENT ACTIVITY

The Applicant has prepared Variance Application VA 2016-01 which staff has reviewed to make a recommendation as to whether or not the five ULDC Section 150-020 criteria are satisfactorily addressed. It is Staff’s opinion that the five criteria have not been satisfied.

Following a review of the initial Application, Staff finds that the Applicant has not demonstrated, by competent and substantial evidence (Ref: Attachment 1), that each of five review criteria in ULDC Section 150-020 has been satisfied and therefore recommends denial of Variance Application VA 2016-02. The Applicant has submitted an updated variance justification (Ref: Attachment 2) for Council consideration.

The Planning and Zoning Board (PZB), at its meeting on May 19, 2016 recommended approval of the Publix Supermarkets, Inc. Variance Application 2016-01 by a 4 – 0 vote.

PZB recommended Town Council consideration of approval based upon its conclusion that the ULDC is deficient in its recognition of the larger signage needs of beneficial large-scale shopping centers that are set back at substantial distances from the road, provided that Town aesthetics are not compromised.

3. ATTACHMENTS

1. Staff Analysis: Variance Application 2016-01.
2. Supplemental Applicant Variance Justification
3. Resolution 2016-41

4. FINANCIAL IMPACT

Work on this project is funded by Applicant's Cost Recovery Account

5. RECOMMENDED ACTION

1. Denial of Resolution 2016-41, as recommended by Staff; or
2. Approval of Resolution 2016-41, as recommended by the Planning and Zoning Board.